

1 Michael Herzog, SBA: 005892
2 **THE HERZOG LAW FIRM, P.C.**
3 14350 N. 87th Street, Suite 180
4 Scottsdale, Arizona 85260
5 Telephone: 480-264-0842
6 Facsimile: 480-422-9008
7 Email: mh@herzogfirm.com

8 Stuart Goldstein, SBA: 005132
9 **LAW OFFICES OF STUART GOLDSTEIN**
10 2700 North Third Street, Suite 2010
11 Phoenix, Arizona 85004
12 Telephone: 602-279-1666
13 Facsimile: 602-285-1907
14 Email: stugoldstn@aol.com

15 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT

17 DISTRICT OF ARIZONA

18 DONALD E. EVERETT and CYNTHIA
19 EVERETT, husband and wife,

No:

20 Plaintiffs,

21 **COMPLAINT**

22 v.

23 TINA M. JOHNSON and JOHN DOE
24 JOHNSON, wife and husband; UNITED
25 STATES POSTAL SERVICE; and
26 UNITED STATES OF AMERICA,

27 Defendants.

28 Plaintiffs Donald E. Everett and Cynthia Everett, by and through their attorneys
undersigned, for their Complaint against Defendants Tina M. Johnson and John Doe
Johnson, wife and husband; the United States Postal Service; and the United States of
America, including its agency the Untied States Postal Service, hereby allege as follows:

1. This case is a civil action against the United States Postal Service; the United
States of America, including its agency the United States Postal Service; and Tina M.
Johnson and John Doe Johnson, wife and husband, for money damages for injuries and
damages sustained by Plaintiffs Donald E. Everett and Cynthia Everett caused by the

1 negligent acts and omissions of the United States government, its agency, the United States
2 Postal Service, and their employees and agents, while acting in the course and scope of
3 their office of employment, and as such, jurisdiction is appropriate in this court pursuant to
4 28 U.S.C. §1331 and 28 U.S.C. §1346(b)(1).

5 2. The acts and omissions of the United States of America and/or its agencies at
6 issue herein are not subject to the discretionary function exception to the Federal Tort
7 Claims Act, 28 U.S.C. § 2680(a).

8 3. Venue in the United States District Court for the District of Arizona is
9 appropriate pursuant to 28 U.S.C. §1391(e), because Plaintiffs reside in this judicial
10 district.

11 4. Plaintiffs have complied with the Notice of Claim provisions.

12 5. By letter dated December 17, 2010, which included designated Form 95, the
13 United States, through the United States Postal Service and its Postmaster Billy B. Garrett,
14 were given notice of the claim pursuant to the Federal Tort Claims Act.

15 6. Plaintiffs Donald E. Everett and Cynthia Everett are husband and wife and
16 were residents of Maricopa County, Arizona at all times material hereto.

17 7. Upon information and belief, Defendants Tina M. Johnson and John Doe
18 Johnson are, and, at all times mentioned herein, were residents of Maricopa County,
19 Arizona.

20 8. At all times material to this Complaint, Plaintiffs are informed and believe
21 that Defendant Tina M. Johnson was acting for and on behalf of the marital community of
22 herself and Defendant John Doe Johnson. The true identity of John Doe Johnson is
23 unknown to Plaintiffs at this time. However, Plaintiffs will amend this Complaint when
24 the true identity becomes known.

25 9. At all times relevant hereto, the United States of America was a government
26 entity, and the United States Postal Service was an agency of the United States, and the
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1 government and its agency were responsible for the actions of the employees who were
2 acting in the course and scope of their agency and/or professional employment for the
3 United States Postal Service and the United States of America.

4 10. Upon information and belief, Defendant Tina Johnson was employed by the
5 United States of America and its agency the United States Postal Service, at all times
6 material thereto.

7 11. At all times material to this Complaint, Plaintiffs are informed and believe
8 that Defendant Tina Johnson was acting in the course and scope of her agency and/or
9 professional employment for Defendants United States Postal Service and/or the United
10 States of America, and that Defendants United States Postal Service and/or the United
11 States of America are vicariously liable and responsible for all actions, omissions, and/or
12 negligence on the part of Defendant Tina Johnson in causing the accident from which this
13 lawsuit arises.

14 12. The collision and all matters alleged herein occurred in Maricopa County, in
15 the State of Arizona. The streets identified below are streets within Maricopa County in
16 the State of Arizona.

17 13. Jurisdiction and venue are proper in this court.

18 14. On or about February 24, 2009, Plaintiff Donald E. Everett was operating his
19 motor vehicle on West Bell Road near its intersection with 53rd Avenue in Glendale,
20 Arizona. The Everett vehicle was being pushed at the time by a vehicle driven by Dennis
21 Wadlington.

22 15. At the same time and place, Defendant Tina M. Johnson, was operating a
23 vehicle owned by Defendants United States Postal Service and/or the United States of
24 America on West Bell Road near its intersection with 53rd Avenue in Glendale, Arizona in
25 the course and scope of her agency and or employment for Defendants United States Postal
26 Service and/or the United States of America. Defendant Johnson operated her vehicle in a
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1 negligent, careless and reckless manner, and the negligence, carelessness and recklessness
2 of Defendant Johnson caused her vehicle to strike the Wadlington vehicle, which in turn
3 struck the Everett vehicle, causing injury to Plaintiff Donald Everett.

4 16. Defendant Tina Johnson's operation of her motor vehicle violated motor
5 vehicle statutes of the State of Arizona, including, but not limited to A.R.S. § 28-701A, and
6 her actions constitute common law negligence and *negligence per se*.

7 17. As such, Defendants United States Postal Service and/or the United States of
8 America are responsible for Defendant Johnson's actions under the doctrine of
9 principal/agent, employer/employee, and ***respondeat superior***.

10 18. As a direct and proximate result of the negligent, careless and reckless acts
11 and omissions of Defendants, Plaintiff Donald Everett sustained severe and painful
12 injuries, as well as shock to his entire body and nervous system. The injuries have caused
13 and will continue to cause Plaintiff Donald Everett physical and mental pain and suffering
14 which have impaired his bodily functions and his ability to perform everyday tasks, all to
15 his damage in an amount to be proven at trial.

16 19. As a direct and proximate result of the negligent, careless and reckless acts
17 and omissions of Defendants, Plaintiffs were forced to incur numerous and diverse
18 expenses for medical care and treatment to Donald Everett in an amount to be proven at
19 trial, and they are informed and believe that additional expenditures for general medical
20 care and attention will be necessitated in the future.

21 20. As a direct and proximate result of the negligent, careless and reckless acts
22 and omissions of Defendants, Plaintiff Donald Everett has sustained a loss of income to the
23 detriment and damage of Plaintiffs in an amount to be proven at trial, and will sustain a
24 future loss of income.

25 WHEREFORE, Plaintiffs prays for judgment against all defendants as follows:

26 1. For a sum that is reasonable and just for Plaintiffs' pain and suffering;

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2. For general compensatory damages in a just and reasonable amount;
3. For the reasonable value of special damages incurred to date and which may
4 be incurred in the future for reasonable and necessary medical care and
attention;
5. For a sum that is reasonable and just and for damages for the past and future
6 loss of income suffered by the Plaintiffs;
7. For Plaintiffs' costs herein; and
8. For other and further relief as the Court and jury deem just and proper under
9 the circumstances.

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11 RESPECTFULLY SUBMITTED this 17th day of February, 2011.

12 THE HERZOG LAW FIRM, P.C.
13

14 By /s/Michael Herzog
15 Michael Herzog
16 14350 N. 87th Street, Suite 180
Scottsdale, Arizona 85260
Attorneys for Plaintiffs

17
18 RESPECTFULLY SUBMITTED this 17th day of February, 2011.
19

20 LAW OFFICES OF STUART GOLDSTEIN
21

22 By /s/Stuart Goldstein
23 Stuart Goldstein
24 2700 N. Third Street, Suite 2010
Phoenix, Arizona 85004
Attorneys for Plaintiffs